IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.489 OF 2007

1. Mahya Lakhiya Radiya
2. Prakash Laxman Gurjar
3. Bhavarsinh Bharatsingh
4. Ramanbhai Chhaganbhai Patil
5. Gopal Kishan Halpati
6. Vijaysinh Parsuram Rama
7 Badhya Mahya Radiya ..Applicants

V/s

1. State of Maharashtra
2. Union Territory of Dadra and Nagar Haveli ..Respondents.

Mr. S.V.Marwadi, Advocate for the applicant.
Mrs. M.H. Mhatre for the State.
Mr. D.A. Nalavade, APP for respondent No.2.

CORAM : J.H. BHATIA, J.

DATE : 21ST FEBRUARY, 2007.

P.C.

. Leave to add respondent No.2. Amendment be carried out immediately.

2. Heard Mr. Marwadi, learned Counsel for the applicant and Mr. Nalawade, learned APP for the Union Territory. The applicants, who are arrested in Crime No.30/2007 registered at Silvassa Police Station Silvassa on 2nd February, 2007 seek to be released on

bail.

3. The prosecution case, in brief, is that one Rajendra Singh Dodi was carrying on the business of quarrying in agricultural lands without any licence from the competent authority under Explosive Act, 1884. It came to the notice of Revenue Authorities and therefore, they raided the spot. The present applicants, who were working there, were arrested. Main accused, Rajendra Singh is absconding. The offence is registered under Section 4, 5, and 6 of the Explosive Substances Act 1908 on the ground that the present applicants were found in possession of explosive substances and were using the same for effecting explosion for the purposes of quarrying in the said field. The application for bail filed by the present applicants came to be rejected by the learned Chief Judicial Magistrate, Silvassa, as well as by the learned Sessions Judge, mainly on the ground that the offences under section 4, 5 and 6 of the Explosive Substances Act 1908 are serious and are punishable with imprisonment for life. It was also noted that the main accused Rajendra Singh is yet to be arrested and two of the accused persons are not resident of Union Territory.

4. Perused the record. The learned Counsel for the applicants contended that the case falls under Explosives Act 1884 and not under the Explosive Substances Act 1908 while learned public prosecutor contended that the case falls under Explosive Substances Act . On careful perusal of the provisions of these two Acts it appears it appears that prima facie case falls under section 9-B of the Explosive Act, 1884 under which for contravention of rules made under section 5 or of the conditions of a licence granted under the said rules, a person manufactures, imports or export any explosive shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both If a person possesses, uses, sells or transports any explosive shall be punishable with imprisonment for a term which may extend to two years with fine or with both and in any other case, with fine which may extend to one thousand rupees. Under sub-sections 2 and 3 the punishment is imprisonment which may extend to three years or with fine or both.

5. Section 3 of the Explosive Sustenances Act provides that any person who unlawfully and maliciously

causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property, shall, whether any injury to person or property has been actually caused or not, be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, and fine. Section 4 provides that any person, who unlawfully and maliciously does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in India of a nature likely to endanger life or to cause serious injury to property or who makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in India, or to enable any other person by means thereof to endanger life or cause serious injury to property in India shall be punished with transportation for a term which may extend to twenty years, or with fine or with a shorter term which may extend to seven years with fine. Section 5 provides that any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it

or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for lawful object, be punishable with transportation for a term which may extend to fourteen years, or with fine or with imprisonment which may extend to five years with fine.

6. According to the learned Counsel for the applicants, the object and purpose of Explosive Substance Act are totally different from the object and purposes of explosive Act. It appears that Explosive Act 1884 was enacted to provide a comprehensive law regulating the manufacture, keeping, sale, conveyance and importation of explosives throughout British India and the provisions were made for granting necessary licence for the said purpose under different sections of that Act. Section 9-B provides punishment for violation of Rules or the conditions of the licence granted under the said Rules. Possession of the explosives is also punishable under Indian Arms Act. To understand the purpose of Explosive Substance Act 1908 under which the accused are arrested, it will be useful to refer the statement of objects and reasons for the said Act. The

relevant part of the statement of objects and reasons may be quoted as follows:-

> *"Recent events have brought prominently to notice the inadequacy of the existing law to deal with crimes committed by means of explosive substances. The Indian Explosives Act, 1884, was framed to prevent accidents rather than to prevent crime and its provisions are clearly inadequate to meet the present emergency. No sentence of imprisonment can be imposed under that Act and the maximum penalty is only a fine of three thousand rupees. The Indian Arms Act, 1878, though it applies to the possession of explosive as well as arms is also inadequate in respect of both of the penalties it allows and scope of its provisions* **for dealing promptly with preparations to manufacture bombs and other explosives**. *The Penal Code provides for the punishment of person to cause hurt or mischief by means of explosive substances and it also deals with attempts to cause hurt or mischief but only when any act towards the commission of the offence is actually done. But it does not provide any penalty for making or possessing explosive substances with unlawful intent and it does not in other cases always provide such severe penalties as are requisite.* **The Governor General in Council therefore considers it necessary to supplement the existing law by an Act on the lines of the English Explosive Substances Act, 1883, which was enacted for the express purpose of dealing with anarchist crimes.**" (Emphasis supplied)

If the statement of objects and reasons is carefully read it becomes clear that the Governor General felt it necessary to enact the Explosive Substance Act to

supplement the existing Acts which were not sufficient to meet the situation wherein the explosives were or were to be used to manufacture bombs and other explosives for anarchist crimes. This Act may be applicable to the Acts, where the explosions are carried out or explosives are possessed with intent to endanger the life or property. It may be by the terrorist or by anti-nationals or by the people who want to just create anarchy in Country or fear in the minds of the people. This could be by explosion of handbombs, grenades or other explosive substance and unfortunately, during last few years our country has been facing such problems in different parts of the Country.

7. However, in the present case, it is not the case of the prosecution that the accused were found in possession of explosives or were using the explosives for the purpose of endangering life or for causing any damage to the property nor the intention was to commit any terrorist or anarchist act. The allegation is that one Rajendra Singh Dodi was illegally quarrying and for that purpose he and his employees were using the explosives for causing a blast in the stone quarry. It may also be noted that said Rajendra Singh Dodi has been

granted licence by the Government of India under the Rules under Explosives Act, 1884 on 3rd March, 2006 for a period ending on 31st March, 2008. It is true that said licence is for the purpose of quarrying in survey No. 43 to 45 of Meghvad village Tal Valsad in Gujrat which is about 200 k.m. away from the spot of incident of this case. It appears that said Rajendra Singh was also using the explosive for the purpose of illegally quarrying in the Union Territory. After visit to the spot, Tahasildar found the illegal quarrying with the help of explosive and therefore, he lodged the report. In such circumstances, prima facie, it appears that the case may fall under the Explosives Act, 1884 and not under the Explosive Substance Act 1908, as the prosecution had tried to make out.

8. In view of the above circumstances, the applicants be released on their executing P.R. of Rs. 10,000/- each with surety in like amount with condition that they shall not tamper with the prosecution evidence and shall report at Silvassa Police Station on every Sunday between 4 to 6 P.M. till filing of the charge-sheet.

(J.H. BHATIA, J.)